IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 4248 of 2004

Between:

1. P. Rajeswaramma, W/o. Late Gowripathirao, Hindu,
   R/o. Laveru Village & Mandal, Srikakulam District.
2. N.V. Someswara Rao, S/o. Kameswara Rao, Hindu,
   R/o. Laveru Village & Mandal, Srikakulam District.

.... PETITIONERS

AND

The Assistant Commissioner of Endowments, Srikakulam.

....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Certiorari setting aside the impugned proceedings Rc.No.A2/2455/2003 dt.23-2-2004 as arbitrary, illegal and contrary to rules by calling for records in the interest of justice.

Counsel for the Petitioner: MR.M.KESAVA RAO

Counsel for the Respondent: GP FOR ENDOWMENTS

The Court made the following:

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ORDER:

Petitioners assail the order, dated 23.02.2004 of the respondent, whereby the second petitioner has been directed to handover the land specified therein along the tiled and thatched houses, failing which the second petitioner has been informed, that the proceedings under Section 84 of the Endowments Act, 1987 (Act 30 of 1987) could be initiated.

2. According to the first petitioner-deponent, her husband was granted a permanent lease of the land in question in 1962. Her husband paid rents to the Executive Officer of the Devasthanam up to 1964, thereafter the deponent claims to have paid lease amounts up to 1975 and since there was no Executive Officer or a competent authority to receive the rents, did not pay any rents after 1975. According to the deponent, the second petitioner is her son-in-law and is residing with her. The petitioners' grievance is that the impugned proceedings directing eviction of the second petitioner from the lands in question is without notice to the first petitioner despite the property belonging to her.

3. A counter affidavit has been filed stating that there is no tenancy in favour of petitioners. No lease was granted by the competent authority to any of the petitioners, at any point of time. It is also alleged that the rent receipts alleged to have been issued by the Development Officer of the group temples during the years 1970 and 1976 are concocted, forged and are fake. There was no Executive Officer to Sri Chandrasekhara Swamy Temple, at any point of time. There was no valid lease in favour of either of the petitioners and there is no concept of any permanent

lease under the provisions of Act 30 of 1987. The counter affidavit specifically asserts that the second petitioner, who was working as Assistant Panchayat Secretary and was a formerly village Administrative Officer, Laverupalem, and who is also working as Postmaster, Laverupalem was dealing with the property and living in the tiled house therein along with his wife and children for a long time un-authorisedly and had also leased out a portion of the property to the postal department for use as a post office. According to the counter affidavit earlier the single trustee of the temple had filed O.A.No.12 of 1993 before the Deputy Commissioner, Endowments, Kakinada under Section 84 of the Act for eviction of the second petitioner and after contest through proceedings dated 12.03.1996, an order of eviction of the second petitioner was issued, and no appeal was filed there against. Therefore, the order, dated 12.03.1996 in O.A.No.12 of 1993 of the Deputy Commissioner of Endowments Department, Kakinada, had become final. It is also stated that the present single trustee of the temple also issued a Form No.1 notice, dated 17.07.2003, under Rule 5(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Agricultural Lands Lease Rules, 2003 to the second petitioner seeking his eviction. On that, the second petitioner filed an application claiming to be a landless poor farmer and sought extension of the benefits under Section 82 of the Act. As the second petitioner is working as an Assistant Panchayat Secretary and also as Postmaster and is therefore, in the employment of both the federal and State Governments, he cannot be treated as a landless poor person, particularly as he is getting a salary of more than Rs.12,000/- per annum. His application was therefore, rejected and the possession of the land in question was taken over on 11.08.2003. The possession was handed over to the temple on the same date, but it was not mentioned in the impugned notice by mistake.

4. The petitioner urged that the claim of the respondent to have taken possession of the land in question on 11.8.2003 is falsified by the fact that the order in the impugned proceedings, dated 23.2.2004, which is much later in point of time, directs the petitioners to handover the possession of the land to the temple. If the petitioners had already been evicted on 11.08.2003 and the possession also handed over to the temple on the same date, as stated in the counter affidavit, there was no necessity for directing the petitioners to handover the land in question to the temple, in the impugned proceedings dated 23.02.2004.

5. It requires to be noticed that in the counter affidavit at
para 5, it is stated that the possession of the property was taken over on 11.08.2003 and handed over to the temple authorities on the same day, but was not mentioned in the impugned notice by mistake. In any event, the expect whether the property was taken over on 11.08.2003 or the petitioner is required to handover the possession, failing which proceedings will be initiated against him under Section 84 of the Endowments Act, 1987, do not assume much significance. The entitlement of the petitioners to the properties has not been established. Therefore, they are not entitled for any relief. The order of the respondent, dated 23.02.2004, is impeccable and is vitiated by no error either by law or of procedure.

5. Neither in the pleadings nor before this Court, the petitioners are able to establish the authority under which they claims possession of the land in question. The second petitioner has already been determined to be an encroacher and orders for his eviction had been passed in O.A.No.12 of 1993. The statement in the counter affidavit that this order has become final is not contested. No independent right of the first petitioner to remain in possession of the lands has either been pleaded or established in this Court. For the aforesaid reasons, this Court finds no merits in the Writ Petition.

6. Accordingly, the Writ Petition is dismissed. No costs.

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21-02-2005

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To

1. The Assistant Commissioner of Endowments, Srikakulam.

2. 2 CCs to GP for Endowments, High Court Buildings, Hyderabad

(OUT)

3. 2 CD copies.